



IFW/DAE

Attorney Docket No. T11355.D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: SCOTT L. NIELSON et al. )  
TITLE: A METHOD, PROCESS AND COMPUTER PROGRAM TO AUTOMATICALLY CREATE A CUSTOMIZED THREE-DIMENSIONAL NAIL OBJECT BY WELDING )  
SERIAL NO.: 10/710,959 )  
FILED: August 14, 2004 )  
EXAMINER: R. Frejd )  
ART UNIT: 2128 )

PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 C.F.R. § 1.137(b)

01/04/2008 EHAILE1 00000017 10710959  
01 FC:2253 525.00 OP

Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

01/04/2008 EHAILE1 00000017 10710959  
02 FC:2453 770.00 OP

Dear Sir:

Pursuant to 37 C.F.R. § 1.137(b), an application that was unintentionally abandoned may be revived as a pending application if the delay was unintentional. Applicant hereby petitions to revive United States Patent Application Serial No. 10/710,959,

Certificate of Deposit Under 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Office of Petitions, Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 31 day of December, 2007.

Grant R. Clayton  
Attorney Registration No. 32,462  
Attorney for Applicant

which became unintentionally abandoned. Small entity status is proper and is hereby claimed. A petition to revive an unintentionally abandoned application must be accompanied by:

- (1) a proposed response;
- (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); and
- (3) a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional."

U.S. Application No. 10/710,959, entitled "A METHOD, PROCESS AND COMPUTER PROGRAM TO AUTOMATICALLY CREATE A CUSTOMIZED THREE-DIMENSIONAL NAIL OBJECT," was filed on August 14, 2004. A first Office Action was mailed on June 29, 2006. Enclosed herewith is the required response to the First Office Action dated June 29, 2006, which is intended to satisfy the first requirement for the proposed response referenced above.

Submitted herewith is a completed Form PTO-2038 authorizing the Commissioner which includes the fee pursuant to 37 C.F.R. § 1.17(m) of \$750 which satisfies the second requirement referenced above. Please charge any additional fees or credit any overpayment to Deposit Account No. 50-0836.

Pursuant to the third requirement of 37 C.F.R. 1.137(b), the undersigned, hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of

a grantable petition was unintentional. The following is a summary of the relevant facts surrounding this delay:

1. The named inventors, Craig Gifford and Scott Nielson, assigned at least a part of their rights in various patents and patent applications, including the current patent application, to an entity known as True Fit Nails, LLC. This fact has been established in a Federal Court action entitled Artificial Nail Technologies, Inc., et. al. v. Flowering Scents, LLC, et. al. filed in the United States District Court for the District of Utah and bearing civil no. 2:06-cv-609 (hereinafter referred to as the "ANT litigation"). As set forth in paragraphs 12 and 28 of the Complaint, True Fit Nails, LLC acquired and developed technologies related to artificial nail products, including an interest in the current patent application. A copy of the Verified Complaint from the ANT litigation is attached hereto as Exhibit "A."
2. On or about June 14, 2005, True Fit Nails LLC assigned all of its assets, including its interest in the current patent application to an entity known as Artificial Nail Technologies, Inc. in exchange for

stock of Artificial Nail Technologies, Inc. See Exhibit A, paragraph 28 of the Verified Complaint.

3. On or about February 28, 2006, Artificial Nail Technologies, Inc. entered into an Asset Contribution Agreement, wherein Artificial Nail Technologies, Inc. assigned its interest in the current patent application to an entity known as Sevea International, Inc. A copy of the Asset Contribution Agreement is attached hereto as Exhibit "B." See Exhibit B to the Asset Contribution Agreement which expressly lists the current application as one of the assets being conveyed to Sevea International, Inc.
4. The parties to the Asset Contribution Agreement had a falling out and the result was the ANT litigation referred to above.
5. One of the issues in the ANT litigation involved title to and the right to control of the current patent application. See Exhibit A; See also Memorandum in Support of Motion for Writ of Replevin from the ANT litigation attached hereto as Exhibit "C."

6. On July 5, 2007, the court in the ANT litigation issued an order for a writ of replevin that ordered, in pertinent part, that the intellectual property purportedly conveyed by Artificial Nail Technologies, Inc to Sevea were to be returned to Artificial Nail Technologies. A copy of the court's Findings of Fact, Conclusions of Law and Order is attached hereto as Exhibit "D."
7. The named inventors in the current patent application assigned their interest in the current patent to American Equities Management, LLC, which assignment was recorded on September 24, 2007. A copy of this Assignment is attached as Exhibit "E."
8. However, Craig P. Gifford, one of the named inventors in the current patent application, was subject to an injunction entered in the Third Judicial court of Salt Lake County, State of Utah on May 4, 2007 in a certain action entitled Michael N. Macris, et. al. v. Sevea International, et. al., Case No. 070903010, hereinafter the "Macris litigation." A copy of the Findings of Fact, Conclusions of Law, and Preliminary Injunction

issued by Judge Robert P. Faust is attached hereto as Exhibit "F."

9. The preliminary injunction of Exhibit F by its terms, *inter alia*, prevented Craig Gifford from utilizing or disclosing trade secrets involving artificial nail technology, including the technology surrounding the patent application in question.
10. A hearing that included a clarification by the court of the scope of the preliminary injunction of Exhibit F was held on December 17, 2007.
11. Issues concerning ownership and control of certain artificial nail technology that were at issue in the ANT litigation and the Macris litigation, including the current patent application, as well as the issues involving the numerous assignments, purported assignments, contested assignments and litigation, as well as issues and uncertainty regarding the legal ability of the inventors to discuss the issues surrounding the current patent application has resulted in the unintentional delay in filing the response which accompanied this petition.

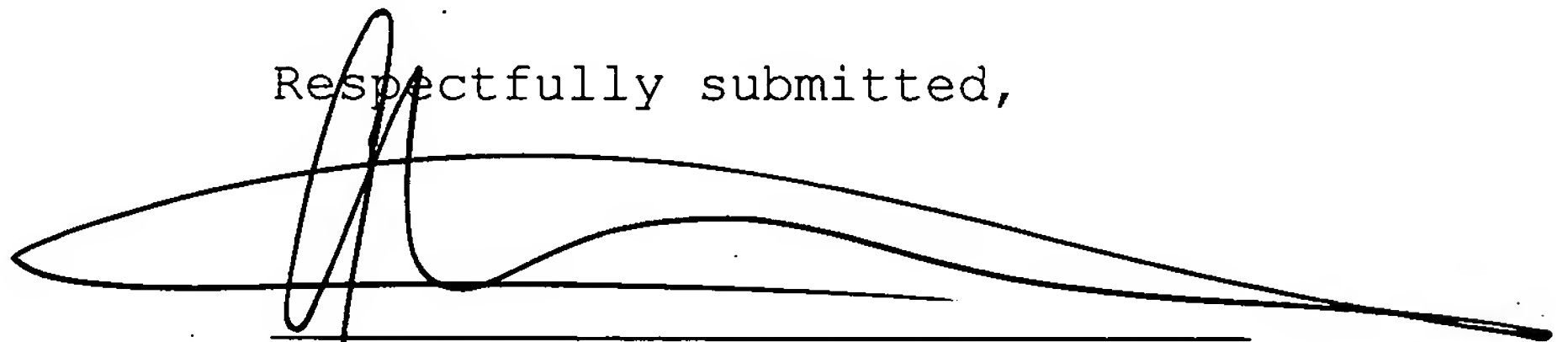
The undersigned respectfully petitions that the above-identified application be revived as all of the requirements of 37 C.F.R. 1.137(b) have been met and the entire delay in filing the required response was unintentional.

Pursuant to 37 C.F.R. 1.136(a), it is respectfully requested that the shortened statutory period which was set for responding to the Office Action dated June 28, 2006, be extended for three months. Submitted herewith is a completed Form PTO-2038 which includes the fee pursuant to 37 C.F.R. 1.17(a)(3) of \$525 as required. Please charge any additional fees or credit any overpayment to Deposit Account No. 50-0836.

Any questions regarding this petition may be directed to the undersigned. The undersigned would welcome a telephone conference if the need arises.

DATED this 31 day of December, 2007.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Grant R. Clayton', is written over a horizontal line.

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Attorney for Applicant

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